IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTIION

CIVIL APPLICATION NO. 368 OF 2005

IN

WRIT PETITION NO. 5652 OF 2004

Nagindas Shamjibhai Shah,
deceased, through heirs
Smt.Jaylaxmi Nagindas Shah
and others ... Applicants

versus

Deo Kalya Patil and others ... Respondents

...

Mr. S.M. Railkar, for the Applicants.

Mr. R.S. Deshpande, for Respondents Nos. 1 to 6.

...

CORAM : A.M.KHANWILKAR,J.

28th March 2005

P.C.:

. This application is filed for clarifying that the direction given in para 5 of the order dated 14th July 2004 is limited till the pendency

of the revision application before the revisional authority. The relevant portion of the order of which modification is sought in the above terms, reads thus :

> "... On the other hand, if the allotment is already made in favour of the private contesting Respondents, the said Respondents shall not create third party rights in such land, nor alter the status of the said land until further directions or orders are obtained from this Court."

. The nature of direction presupposes that the same will come into effect only if the land was to be allotted to the private contesting Respondents in the writ petition. In the first place, the direction given to the authority is not to allot any land to the private Respondents, if it is already not done, till the passing of the said order. It is not in dispute that no land has been allotted to the private Respondents till the passing of the order on July 14, 2004, or, for that matter, even till today. In any case, no land could be allotted to the private

Respondents after the order was passed by this Court on July 14, 2004. The order extracted above was only a consequential order passed. However, as no land has been allotted to the private Respondents, that part of the order will not come into play, for which reason, it will not be necessary to modify that part of the order as is prayed in this application.

. However, it is made clear that after the disposal of the revision application by the revisional authority, and the issue is answered in favour of the private Respondents, which would be the basis for allotment of land in their favour, the said allotment will be subject to such other or further orders to be passed by the revisional authority or superior Court in proceedings emanting from the order of the revisional authority. The application is disposed of on the above terms.

(A.M.KHANWILKAR,J.)